

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE : MDL No. 1720(MKB)(JAM)
FEE AND MERCHANT DISCOUNT :
ANTITRUST LITIGATION : Civil No. 05-5075(MKB)(JAM)

This Document Relates To: : RULE 23(b)(3) CLASS COUNSEL'S
ALL ACTIONS. : MONTHLY REPORT REGARDING THIRD-
PARTY ENTITIES

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I. INTRODUCTION

This is the fourth monthly report regarding third-party claims filers following the Court's request.

As Rule 23(b)(3) Class Counsel ("Class Counsel") reported previously, with the claims process ramping up, there has been a noticeable increase in class member calls. Since the last report, the numbers have steadily increased. These calls are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation.

In this report, Class Counsel describes current issues related to third parties.

II. UPDATES REGARDING THIRD-PARTY ISSUES

First, Class Counsel here provides an update on an issue related to the company J.E. Lawrence and Company, LLC ("J.E. Lawrence"). On December 6, 2023, a class member contacted Class Counsel with concerns regarding multiple solicitations received over a short period of time. The class member read the Court's orders regarding third parties and then contacted Class Counsel. While the public-facing materials of J.E. Lawrence appear compliant, Class Counsel was surprised to see a failure to include any disclaimers and that a purported V.P. from the company was making numerous false and/or misleading statements via email to an untold number of class members. Class Counsel immediately wrote to the contact at J.E. Lawrence to whom Class Counsel has spoken with multiple times to demand: (1) that the false and/or misleading solicitations cease; (2) to correct all prior misstatements that had been shared with class members; and (3) to allow any class member that signed up with J.E. Lawrence for claims filing based on the improper solicitations to cancel their contracts. Class Counsel and J.E. Lawrence have continued to be in touch, with J.E. Lawrence providing regular updates regarding the corrective disclosures sent to class members. As of December 19, 2023, J.E. Lawrence has completed mailing more than 13,900 class members. Additionally, J.E. Lawrence provided a best practices guide it developed and sent to all its agents.

This document appears compliant with all the Court’s orders and is a helpful tool. At present, there are no issues regarding this entity.

Second, Class Counsel is still in discussions with a law firm, which had served as one of plaintiffs’ counsel, offering claims-filing services to merchants. It is Class Counsel’s position that this new service being offered conflicts with the firm’s duty as one of plaintiffs’ counsel who has already received attorneys’ fees. The law firm provided an expert opinion and Class Counsel has sought the opinion of Professor Charles Silver, an expert that previously provided a declaration regarding attorneys’ fees in this matter. Professor Silver raised a number of issues in response to the law firm’s expert opinion and a letter was sent to the firm January 11, 2024. This issue is not yet ripe for the Court’s assistance in determining whether the firm’s claims-filing service conflicts with its role in the underlying action and its acceptance of attorneys’ fees. Class Counsel expects to have a final opinion regarding this matter in the coming weeks and will report promptly.

III. NEW ISSUES

Class Counsel receives near daily emails and calls from both class members with questions regarding third parties as well as from third-party claims-filing company representatives with questions regarding the claims process. Additionally, Class Counsel conducts searches to determine whether various third parties are complying with the Court’s orders.

Recently, as part of that search process, a company called Financial Fuel Services (“FFS”) was discovered to be advertising claims-filing services with misstatements about the settlement and a failure to include the disclaimers. A letter was sent to FFS on December 28, 2023, and within an hour, the principles of the company contacted Class Counsel. They removed all advertising immediately and stated that they had partnered with Managed Care Advisory Group (“MCAG”) to provide services, but that they no longer intended to do so. A review determined that a video and blog post are no longer available. On January 3, 2024, Class Counsel had a call with MCAG and its counsel to discuss the FFS matter and other issues. During the call, MCAG stated that it shares materials, including the required disclaimer language, with all partners and regularly monitors its

partners' outreach messages to ensure compliance. At this time, no further action is recommended, but Class Counsel stated that they might seek another call in the coming weeks, if necessary.

An additional search was directed by Class Counsel into all known claims-filing companies that had previously appeared on prior iterations of third-party reports. Using a report from October 2017, Class Counsel had a search conducted into the 70+ entities listed in that report. Several of the companies are no longer advertising anything related to the case and many appear to no longer be in business. Several of the companies have the most recent disclaimer language and a few have the older disclaimer language. At this time, no action is suggested as to any of these companies.

IV. OUTREACH TO THIRD PARTIES BY EPIQ

As Class Counsel previously reported, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. As of January 3, 2024, Epiq has been in communication with 85 third-party claims filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 85 third parties, Epiq has received client lists from 45 third-party claims filers which claim representation of 179,246 Tax Identification Numbers ("TIN")/Legal Entities. These client lists also include multiple rows for a single TIN, and multiple rows that lack Tax IDs or have invalid Tax IDs (alphabetic characters, too few or too many digits). Of those 45 third-party claims filers, Epiq has received 113,363 documents from 40 third-party claims filers. Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

V. CONCLUSION

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on February 16, 2024.

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